



**MINUTES
SCOTTSDALE PLANNING COMMISSION
KIVA – CITY HALL
3939 N. DRINKWATER BOULEVARD
FEBRUARY 11, 2004**

PRESENT: Steve Steinberg, Vice Chairman
David Barnett, Commissioner
Jeffery Schwartz, Commissioner
Steven Steinke, Commissioner

ABSENT: David Gulino, Chairman
James Heitel, Commissioner
Eric Hess, Commissioner

STAFF: Kurt Jones
Pat Boomsma
Kira Wauwie
Greg Williams

CALL TO ORDER

The regular meeting of the Scottsdale Planning Commission was called to order by Vice Chairman Steinberg at 5:00 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above.

MINUTES APPROVAL

January 14, 2004

APPROVED

COMMISSIONER BARNETT requested a correction to the January 14, 2004 meeting minutes. On page 2, under motion for election of Chairman and Vice Chairman he believed neither David Gulino nor Steve Steinberg could vote so the vote should indicated 4 to 0 as opposed to 6 to 0.

COMMISSIONER BARNETT MADE A MOTION TO APPROVE THE JANUARY 14, 2004 MINUTES AS AMENDED. SECOND BY COMMISSIONER SCHWARTZ.

THE MOTION PASSED BY A VOTE OF FOUR (4) TO ZERO (0).

EXPEDITED AGENDA

13-AB-2003 (Cave Creek Road Adjacent to the Mirabel Village 15 & 16) request by Site Consultants Inc, applicant, Terrabrook Mirabel LLC, owner, for abandonment of excess right-of-way easements located on the south side of Cave Creek Road between 96th Street & 100th Street Alignments.

COMMISSIONER STEINKE MOVED TO FORWARD CASE 13-AB-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER SCHWARTZ.

THE MOTION PASSED BY A VOTE OF FOUR (4) TO ZERO (0).

1-AB-2004 (North Scottsdale Horseman's Park) request by Kimley-Horn & Associates, applicant, North Scottsdale Horseman's Park LP IV, owner, to abandon the 33 feet wide General Land Office patent roadway and public utility easements in a portion of Government Lot 35 & Government Lot 36 located at the northeast corner of 98th Street and McDowell Mountain Ranch Road.

MR. JONES stated there is a letter email that was handed out to each of the commissioners' with regard to Case 1-AB-2004 and it is their prerogative whether to read it out loud or put it on the record the letter was received. Vice Chairman Steinberg requested it is noted for the record that the letter was received.

MR. JONES presented this case as per the project coordination packet. Staff recommends approval.

(VICE CHAIRMAN STEINBERG OPENED PUBLIC TESTIMONY.)

LEON SPIRO, 7814 E. Oberlin Way, spoke in opposition of this request. He stated this Planning Commission meeting is to be held under the Arizona open meeting statute. He requested all of his questions asked to staff and the Commission are answered and noted. He asked the City Attorney what the city is abandoning. He inquired if the city is only abandoning the city's rights to these

GLO easements and not any private property right should they exist. He noted Assistant City Attorney Bronski has stated when the city abandons the easements they are gone. It seems like there is some confusion existing in the City Legal Department.

He inquired if the City permits construction on these federal land patent roadway reservations commonly referred to as a 33-foot GLO roadway easement if permitted by the city is the city liable to the property owner. Should there ever be legal action taken because of a private property right lawsuit. He also inquired if these GLO easements are going to be blocked or constructed upon in anyway by the applicant.

He read an email correspondence to Council and some members of staff from John Aleo who is a citizen of Scottsdale that addressed the fact that GLO patent easements for roadway and public utilities were created under federal law. There are no provisions in federal law to abandon or remove said patent easements from a plat of survey. The letter addressed the legal issues related to abandoning GLO easements. The letter also references lawsuits involving GLO easements. The letter indicates that GLO easements should remain in perpetuity.

(VICE CHAIRMAN STEINBERG OPENED PUBLIC TESTIMONY.)

MS. BOOMSMA reported the Commission had a study session on GLO easements just a few weeks ago. The summary of the City's position at this time is that the City is abandoning only its interests in the general land patent office easement. And takes no position whether any private right exists over the easement as that is a matter between private parties and not a matter with the City. The City declines to take a legal position when it does not need to. Regarding liability the City Council has considered the issue at length and had a number of executive sessions and legal memorandum exchanged. It is their position and the City Council's decision as to what legal risk to take in planning matters as well as all other matters. The City Council directed staff and requested the Planning Commission limit inquiries to the planning issues involved as opposed to the legal risk involved.

She stated the third question was regarding whether the GLO easements would be constructed on. She replied that she had no knowledge whether these GLO easement would be constructed on and that would be an issue of whether they would be infringing on any private rights because they would not be infringing on any city rights.

COMMISSIONER SCHWARTZ MOVED TO FORWARD CASE 1-AB-2004 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER STEINKE.

THE MOTION PASSED BY A VOTE OF FOUR (4) TO ZERO (0).

WRITTEN COMMUNICATION

There was no written communication.

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission was adjourned at 5:15 p.m.

Respectfully Submitted,

"For the Record " Court Reporters

APPROVED